

General Information Letter: The special statutory provisions for investment partnerships were not in effect for 2003.

September 12, 2006

Dear:

This is in response to your letter dated July 18, 2006, which was forwarded to me for consideration. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov). In your letter you have stated the following:

We recently received the enclosed notice stating that your records indicate a 2003 Business Income and/or Replacement Tax return should have been filed due to the receipt of income from a partnership or subchapter S corporation.

During the 2003 tax year FUND1, LP (EIN XX-XXXXXXX) owned an interest in FUND2, LP (EIN: XX-XXXXXXX). FUND2 is domiciled in the state of Illinois; however, FUND2 is an investment partnership and the income is portfolio in nature; thus should not be sourced to Illinois. Because your notice does not provide detail with respect to the cause of an Illinois filing requirement, I assume the FUND2 K-1 is the reason. If this is not the case, please send further information which will assist us in determining our correct filing status for Illinois state tax purposes.

Response

Section 305(a) of the Illinois Income Tax Act (35 ILCS 5/305) provides:

The respective shares of partners other than residents in so much of the business income of the partnership as is allocated or apportioned to this State in the possession of the partnership shall be taken into account by such partners pro rata in accordance with their respective distributive shares of such partnership income for the partnership's taxable year and allocated to this State.

On its 2003 Illinois income tax return, in FUND2, LP reported 100% of its income was allocated to Illinois. It also reported that FUND1, LP was one of its partners. According to that return, therefore, FUND1, LP was subject to Illinois income tax on its share of the income of FUND2, LP pursuant to the express provisions of Section 305(a).

In 2004, Public Act 93-840 amended Section 305 to create a special allocation rule for partners in "investment partnerships" that are engaged in the business of investing in assets that you describe as "portfolio in nature." However, that provision has no application to 2003, so it is irrelevant whether or not FUND2, LP might qualify as an "investment partnership."

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are

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not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax